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QUEEN'S BENCH.

APPEAL SIDE.

THE GRAND TRUNK RAILWAY COMPANY
OF CANADA,

Appellants,

AND

ROBERT FRASER, ET AL,

Respondents.

APPELLANTS' CASE.

G. E. ROBERTSON FOR APPELLANTS.

OK

COURT OF QUEEN'S BENCH.

APPEAL CASE

THE GRAND TRUNK RAILWAY COMPANY OF CANADA,

(Defendants in the Court below.)

APPELLANTS

AND

ROBERT FRASER, ET AL,

(Plaintiffs in the Court below.)

RESPONDENTS.

APPELLANTS' CASE.

THIS was an action for damages by the Respondents against the Appellants for several hundred and fifty pounds Currency, for alleged breach of a contract entered into between the Respondents and the late St. Lawrence and Atlantic Railroad Company, on the Twenty-first day of July, one thousand eight hundred and fifty-two, by which Respondents bound and obliged themselves to build, and in every respect complete, according to plans and specifications, and under the direction of the Company's engineers, the following Way and Water Stations on the line of the said St. Lawrence & Atlantic Railroad, on the different sites pointed out by the Company, to be completed at the following periods:

Water Station at Windsor, 1st August, 1852.

Way and Water Station at Leamoville, 16th September, 1852.

Way & Water Station at Waterville, 1st October, 1852.

Way and Water Station at Compton, 1st October, 1852.

Way & Water Station at Baldwin's Mills, 1st November, 1852.—

the said Company agreeing to pay for each Way Station, two hundred and fifteen pounds, and for each Water Station, ninety-five pounds, with the privilege of reserving ten per cent until the completion of the works.

Amongst other clauses of said Contract, referred to in plaintiffs declaration, such declaration contains the following:—

"And it was further agreed by and between said parties, that if it should appear to the chief engineer of the said Company, that the establishment and rate of progress, at and in the said works, were not such as to insure the completion of the same within the time in and by the said agreement limited, or if the plaintiffs should persist in any course contrary to the instructions of the chief engineer, or in any manner violate the provisions and evident import of said contract, the said Company, on being satisfied to that effect, should have the power at discretion and without previous notice or protest, and without process or suit at law, either to take the work out of the hands of the contractors and re-let the same, with or without previous advertisement, to any person or persons willing to undertake the completion of the same, or to employ other additional mechanics or workmen, and provide materials, tools and other necessary matters and things at the expense of plaintiffs, and complete the same, or to make such a deduction as the said Company may consider sufficient to cover any deficiency or imperfection in any part of the works, and in case the plaintiffs should be liable for damages and extra cost and expenditures which said Company might incur by reason of the premises, and should forfeit all monies due to them by the said Company on account of the contract."

The Bill of particulars filed by the Respondents with their declaration printed in appendix, is for work claimed as actually done, and for materials furnished and used by the St. Lawrence & Atlantic Railroad Co. and Appellants in the said works, and amounts to £348 and, after deducting £465 acknowledged to have been received on account, leaves the balance of £236, and this Bill of particulars the Respondents set forth item by item in their declaration, the remainder of their claim of £370 being for damages by reason of the works having been taken out of their hands.

These damages, not included in Bill of particulars, are alleged as arising:

1st. From loss of profits which might have been made, had Respondents been permitted to complete their contract, and from being thrown out of employment.

2nd. Loss of reputation as skillful artisans and faithful workmen.

3rd. From delays of Company's Engineers in laying out work, and change of plans and contradictory orders.

There is no claim made in plaintiffs declaration by way of the common counts for work and labor done, and materials furnished, aside from the contract, but the whole action is based and rests on the contract and its fulfillment by the plaintiffs. Besides a defense *in fact* the defendants by two exceptions after admitting the contract, substantially put in issue.—

That the plaintiffs had wholly failed to fulfill their contract—in not completing the works in time—in not performing their work in a workmanlike manner—alleging further, that the work done was bad and the ma-

materials bad, so that a large amount of the work done had to be removed and new materials furnished—that the plaintiffs refused to obey the instructions of the Company's Engineers, and after repeated notifications by the engineers and agents of the St. Lawrence & Atlantic Railroad Co. that the works must be taken out of the plaintiffs' hands unless they proceeded with greater diligence and provided better materials. The plaintiffs failed to do so, and in consequence (on the 23d June 1853) the St. Lawrence & Atlantic Railroad Co. was compelled, for its own protection, and to enable the Company to use their Road, to take the works out of the plaintiffs' hands, as authorized by the contract and to employ other workmen to complete the works.

That all the works done and materials furnished for the works by plaintiffs, including all the materials left at the time the contract was taken from them, both on the Company's ground and elsewhere, (even if the materials had been good and the work well done,) did not exceed the sum of £352 7s 11d as set forth in defendants' Exhibit No. 1, but that the materials on the ground were not paid for by plaintiffs, and the Company was compelled to pay and did pay for them, and the item for work partially completed for Way & Water Stations charged at the sum of £135 was only worth £40, and that moreover no part thereof was ever delivered to or received by appellants, nor could they ever obtain possession of any part of them, delivery thereof having been refused to the Company by the parties having them in possession.

That even if the plaintiffs were allowed payment for all work done and materials furnished, and for all the materials which the Company could get into its possession and were compelled to pay for to the parties furnishing the same, and which plaintiffs have charged the Company with, but never paid for themselves, and for all the partly finished work which the plaintiffs have charged for, but which the Company never could get nor used, the whole would only amount, at their value, to £417 7s 11d, while plaintiffs admit the payment of £468, and that the Company, on the urgent solicitations of plaintiffs for money, had advanced a much larger sum than was actually due to them.

The issue was joined by general answers and replications on the part of plaintiffs.

The only question of law arising out of the evidence in this case, decided by the Court below in rendering judgement, was—whether the Company under the facts disclosed, was warranted in taking the work out of the hands of Respondents under the clause in the contract to that effect.

Appellants submit that the St. Lawrence & Atlantic Railroad Co., was warranted in so doing.

The last of the works were to be completed by the 1st November, 1852. The work was bad and materials bad. The plaintiffs, after repeated warnings and notifications to proceed with the works to completion, and to employ a greater number of men, neglected to do so (although at Lennoxville the Company absolutely required the use of the Way Station) and plaintiffs were at the same time not performing the work according to contract. The work was taken out of plaintiffs' hands on the 23rd June, 1853.

The question is chiefly one of evidence and the Appellants submit that the Court below has wholly failed to appreciate the evidence on both sides.

The figures which the learned judge handed to the counsel at the time of rendering judgement, will be found in the appendix, by which it will be seen that even taking the view of the case the court then did, the judgement has been rendered for the sum of £20 more than was intended, by a wrong addition in the amount of the different items allowed by the Court. It is submitted that a great portion of the Evidence of the plaintiffs is hearsay, and the calculations as to the value of the work actually done by plaintiffs, are based, not on any personal knowledge of the works done by them, but on information obtained from the plaintiffs and others, and it is submitted that as to the damages and loss of profits suffered or alleged to be suffered by plaintiffs by reason of the contract having been taken from them, none of the plaintiffs' witnesses had ever seen the contract nor knew personally what the works actually were which the plaintiffs had contracted to perform, and such of the plaintiffs' witnesses as speak of the specifications, speak of a paper in the handwriting of Fraser, one of the plaintiffs (but which is in no way proved to be the actual specifications for the work) and that therefore, they are not in a position to speak as to such damages or loss of profits—whereas, Appellants' witnesses speak from personal knowledge, having built similar Stations under more favorable circumstances, both as to the prices of wages and materials. It will be remarked that the works were taken out of the hands of the plaintiffs on the 23d June, and the Estimates as made by plaintiffs' witnesses, were not made till the 11th October, 1853, after the works had been completed by the Company, and that there is an absence of legal proof that the works actually valued by plaintiffs' witnesses, were performed by the Respondents. If such were the case, and the Estimate anything like a correct one, it would only tend to confirm the testimony of Appellants' witnesses, that the Respondents in contracting to build the Way Stations at £215 each, had made a bad contract and that even if the Company were not legally justified in taking the works out of plaintiffs' hands, instead of this being any damage, it was rather a benefit to Respondents, as the Appellants have made no claim, either for overpayment or for monies expended in finishing the works.

The Appellants submit however, that the St. Lawrence & Atlantic Railroad Co., had just grounds to take the works out of the Respondents hands, and that the argument used by them in the Court below, that delays were occasioned by the Engineers, is unproved to any extent, and is, moreover untenable—there being no notification to, or protest against the Company by plaintiffs at the time.

The Appellants submit that the evidence adduced by them in the Court below (published in the appendix) bears out the pretensions set forth in their plea, and that the Court below should have dismissed plaintiffs' action, and that in no case were they entitled to any damages for the loss of profits, which the Court estimated at £70.

The following is a copy of the judgement of the Court below :—

The twenty-seventh day of March, One thousand Eight hundred and fifty-eight.

PRESENT:

THE HONORABLE MR. JUSTICE SHOWN.

The Court having heard the parties by their respective Counsel, examined the proceedings and proof of record, in this Cause filed, and upon the whole deliberated, doth consider that inasmuch as by the evidence

advised, it is among other things, established that at the time the said Plaintiffs were dismissed by the Defendants from the work specified in the Contract mentioned and referred to in the Plaintiffs' declaration, they had performed in a good and workmanlike manner, under the direction, inspection, and superintendence of the Engineers and Agents of the said Defendants, a considerable amount of the said work, and had found and provided diverse materials and necessary things for the said work, the whole of the value of Six hundred and thirty-one pounds seven shillings and eleven pence currency, that whatever delay had occurred in the execution of said work, had been caused by the Defendants themselves, and that they, the said Plaintiffs, were then proceeding with the said work well, and with reasonable celerity, and in as much as it appears by the evidence, that the said Contract would have yielded to the said Plaintiffs a profit of from ten to twenty per cent, they the said Plaintiffs are entitled to recover from the said Defendants, as well the said sum of Six hundred and thirty-one pounds seven shillings and eleven pence currency, as the further sum of Seventy pounds currency, as damages, equal to ten per cent of the price of the work remaining to be done under the said Contract, after deducting therefrom the sum of Four hundred and Sixty-five pounds currency, paid by the said Defendants, and doth in consequence adjudge and condemn the said Defendants to pay the said Plaintiffs, the sum of Two hundred and thirty-six pounds seven shillings and eleven pence, with interest on the said sum from the day of the *Demande Judiciaire*, and costs of suit *distribués* to Plaintiffs Attorneys.

By the Court,

(Signed)

SHOPE & MORRIS.

P. 8, C.

EVIDENCE ON THE PART OF THE DEFENDANTS.

JAMES A. GORDON, of the Town of Sherbrooke, in the District of St. Francis, Contractor, aged about 42 years, being duly sworn upon the Holy Evangelists, doth depose and say:

I know all the parties in this cause. I am not related, allied or of kin to any or either of them, nor interested in the event of this suit. I know Fraser, one of the plaintiffs, and am in the employment of the defendants, and have been so since the first of May 1863. I have examined the contracts between the Plaintiffs and the St. Lawrence & Atlantic Railroad Company, filed in this cause by the Defendants as their Exhibit No. "4," a copy of which is also filed by Plaintiffs in this cause, as their Exhibit No. "1," by which the Plaintiffs undertook to build for the said St. Lawrence & Atlantic Railroad Company at the following periods:— The Water Station at Windsor, to be completed on the first day of August next after date of said contract, to wit: August 1st 1863. The Way & Water Station at Lennoxville on the fifteenth day of September then next. Way & Water Station at Waterville on the first day of October then next. Way & Water Station at Compton on same date, and Way & Water Station near Baldwin's Mill, Township of Barnston, on the first day of November then next according to the specifications, for the price of two hundred and fifteen pounds currency for each Way Station, and ninety-five pounds currency for each Water Station.

On the first of May 1863 I was employed by said St. Lawrence & Atlantic Railroad Company as superintendent of Bridges and Buildings between Longueuil and Island Pond, upon the line of said Railway, and have continued so ever since, in said capacity. The Water Station at Windsor, I believe, was completed before I went into the employment of the Company. I cannot state whether it was completed according to contract, as I had nothing to do with it. I found the Plaintiffs in the act of building the Way Station at Lennoxville, that is, they had partially completed it. I told plaintiffs to put men on, and complete the Lennoxville Station at once, as the Company wished to have it completed for immediate use. I found part of the Verandah floor had been laid, and that the joice (joists) was broken down. I also found the joice was smaller than the dimensions specified in the specification, viz: they were three inches by six, instead of four inches by seven. I told him to take those out and put in larger ones which would be in accordance with the specifications. I was then absent from the work for a week, and when I returned to Lennoxville I found two men at work there; they had put in some joice 2 1/2 inches by seven, and had cut them so short that by shoving them up the joice at either end, they would fall. I ordered them to take them out. I inquired where Fraser was. They said he was at Waterville. I requested him to meet me there, Lennoxville, on the third or fourth day afterwards. He did not come. I then went to Waterville to see him. I told him I had instructions from the company to put on men and finish up the work, but that I did not want to do it, and that he had better put on men and finish the work. He promised to do so, but did not. I went to him several times, to no avail, he often promised, but did nothing. This conversation alluded to the Stations at Lennoxville, Waterville, Coaticook. But I more particularly requested him to finish the Lennoxville Station first, as the track was laid there, and the Company required to use it. I put no men on the work until plaintiffs got his (their) dismissal from the Company. This was some time in the month of June. I handed him the letter of dismissal myself. The paper now shown me, plaintiffs' Exhibit No. seven is the same, as I believe, to be the letter I refer to. I then put men on the Station to finish it. Some portions of the work at the Lennoxville Station was well enough, and some of it was poor, both as to materials and workmanship. The roof I found poor. The contract required pine shingles, 18 inches long and laid 4 1/2 inches to the weather. I found that spruce shingles were used measuring 16 inches, and laid 6, 6 and 7 inches to the weather, causing the roof to leak badly, and we were compelled to get shingles and repair the roof, but could not make a good job of it then. The architraves were to have been six inches, 3 inch furred. I found only a plain skirting, only four and a half inches wide; the locks were to have been carpenter's locks, I found small iron locks, and all out of repair excepting one; the office door was to be a sash door, opening into two halves in the centre, which door we removed and put in a new one; we also had to take down a portion of the chimney and rebuild it; the boards, by the specifications of the outside, were to have been inch boards, tongued and grooved, doubled, that is, two boards one inch thick, but there was only one thickness of boards, and they had been put on green, and had shrunk so much that we were obliged to remove them repair them and put them on again. I do not believe that any man could make one

cost in the building the Way Station required by said contract and specifications at three hundred pounds. I had three hundred pounds myself for buildings precisely of the same kind on the same line of Railroad at Upton and Acorn the year previous where and where labor and materials were cheaper, and I made about twelve and a half per cent on said buildings.

The difference between the price I had to pay for carpenters in the year 1851, when I built these stations was a quarter of a dollar per day less than could be procured in the year 1852. The difference in the price of labor and the difference in the price of materials would have more than swallowed up all the profits I made at three hundred pounds. I think plaintiffs could make fifteen pounds profit upon each Water Station. I think the Water Stations, if built according to the contract and specifications, could be built for seventy-five pounds. It cost defendants eighty-five pounds, fourteen shillings to finish the Station as it now is at Lennoxville. The station is not now finished according to the original plan and specification. It would have cost more to have finished the Way Station at Lennoxville according to the original plan and specification than it would to finish it in the manner it now is. There is an alteration from the original specification in the foundation, but I do not know by whose orders it was done; the original specification specified that the foundation was to be laid of some masonry, two and a half feet under ground, and the foundation as actually built is now on cedar posts, numbering, I think, thirty or thirty-four; the price of the cedar posts and putting them in would cost about five pounds—and the stone foundation according to the specifications would cost at least nineteen pounds. The masonry, that is the building of the wall alone, supposing that all the materials had been on the ground, would cost more than the foundation as it now stands, consisting of cedar posts. According to the prices I have paid myself for building such wall or masonry it would cost nine dollars and ten cents more to lay the wall without counting the cost for laying the stones on the ground. In my estimate of what it would cost to build these Way and Water Stations I include those, all those stations which the Plaintiffs undertook to build. There was no Water Station built at Lennoxville; the frame for a water station was got out and on the ground at Lennoxville, and was nearly if not altogether framed. I made an estimate of the value of the timber and the work done upon the frame, and estimated the value at twenty pounds. In all my estimates made of the work done and materials furnished by the Plaintiffs for the Saint Lawrence and Atlantic Railroad Company under said contract, at the time the work was taken out of their hands, I allowed an additional fifteen per cent over and above what I considered a fair price and value for such work and materials. I have examined the paper writing filed in this cause as "Defendants' Exhibit No. 1," and that is the estimate I made of all the work of the work done, and of the materials furnished by Plaintiffs to the Saint Lawrence and Atlantic Railroad Company, under the said contract, amounting £352 7 11, and this includes the fifteen per cent over what I considered the actual value of said materials. The first two items in said account for the Windsor Station I did not estimate, as the work was finished before I became superintendant, and the full contract price for the Water Station allowed, and also the charge for the water Tank there, as made in Plaintiffs' Exhibit No. 4. At the time when the plaintiffs were discharged from said works the condition of the Way and Water Station at Waterville was as follows:—The Water Station was framed and raised, rough-boarded and shingled, and the water tank placed in it. There was nothing done to the Way Station there, nor was there any materials on the ground for it. There was some window sash, doors, couple (coupling) blocks, door frames, and some window frames, in Mr. Flanders' shop at Waterville, but with the exception of two or three of the coupling blocks, and a few of the window and door frames, such work and materials was (were) not according to contract; the coupling blocks were too small and the doors nearly a foot shorter than the plan. The Company besides never got possession of any of those things from Flanders' shop, they refused to let the company have them for the reason that the plaintiffs owed him, and that he would not let them go until he was paid. Supposing that the materials and partly finished work at the Waterville Station had been good and had been made according to the said specifications, their value would not have amounted to forty pounds currency. I made that estimate of their value, allowing fifteen per cent additional, as set forth in Defendants' Exhibit No. 2. I allowed forty pounds in my estimate for the materials and labor done at Waterville, and that was a very large allowance.

The situation of the Plaintiffs works at Costicook, when the works were taken out of their hands, was as follows:—The Way Station was about half framed, part only of the materials were on the ground for the frame, and another part which had been got out, as I understood, by Mr. Baldwin, but he would not deliver it, that is, the portion that was lacking, unless I would pass my word that he should be paid for it. The Company afterwards gave me a hundred dollars or thereabout, which I paid over to them (him). In fact, the plaintiffs paid nothing for the materials delivered at the Costicook Station. That part of the materials on the ground at Costicook were taken and paid for by Mr. McFarlane, who built the Station at Costicook and paid the parties who furnished the same, and as I have already said, the Company paid for such materials as were afterwards required, and were not delivered on the ground, at the time the contract was taken out of their hands. In the estimate I gave the Plaintiffs I allowed them all the materials which were upon the ground, as if they had paid for it, but it turned out afterwards that the Plaintiffs had not paid for it, and it was paid for by Mr. McFarlane and the Company. The plaintiffs had done nothing at Compton; a brick station has since been built. I cannot say whether the works were finished in as economical a manner as the plaintiffs might possibly have done it. I only saw the manner in which they conducted their business from the first of May when I went there, up to their dismissal. The plaintiffs in this case might of (have) finished the Lennoxville Station from the time I went on to the work up to the time they were dismissed. A brick Water Station was afterwards built at Compton, a way and Water Station of brick, Waterville, and the same at Costicook. My opinion is that the Plaintiffs would of (have) suffered more damage, if they had been compelled to finish their contract, than by having the work taken out of their hands. If the plaintiffs had finished their contract as they were bound to do, they must, from the prices they took the work at, of (have) lost money at least to the amount of £150. I am not aware whether the Plaintiffs, between the first of May, and the time they were discharged, were notified by any other person to proceed with the works.

These buildings—I have been in the employ of the defendants since the 1st of May, 1888, as superintendent of the wood works on the Road. Previous to that time I had done jobs under contract for them. I built all the stations except two on the road built before plaintiffs' contract. I tendered for these buildings in plaintiffs' contract mentioned at the time Plaintiff's tendered. As soon as I can remember my tender for way and water stations was some three hundred and eighty odd pounds. Defendants' Exhibit No. 1 is a copy of the estimate that I made at the time the contract was taken from the Plaintiff. I think I gave the plaintiff a copy of an estimate which I made at the time plaintiffs were discharged—that was not a copy of this estimate, but was some fifteen per cent. The plaintiff has, not had a copy of defendants' Exhibit No. 1 to my knowledge. The copy "Plaintiffs Exhibit X" now produced appears to be a copy of the Estimate made by me when the plaintiffs were discharged, but the signature, James A. Gordon, subscribed thereto, I do not believe to be my handwriting.

Question.—Did you in the first Estimate, and the one furnished to plaintiff, make any allowance for changes in foundation at Windsor?

Answer.—I did not know of any change in the foundation at Windsor.

Question.—By whom were you made aware of these changes?

Answer.—I do not know whether it (was) Fraser who told me, (or) whether it was by examining the specifications.

Question.—How is it that in your first estimate the amount of all the works done by Plaintiff at Lennoxville, are valued at only a hundred and nineteen pounds; while said works in your second Estimate are valued at a hundred and eighty-five pounds?

Answer.—When I made the valuation of the works the first time, I allowed what I considered they were worth, and when I made the second valuation last winter, I then allowed those prices which I considered to be more than the value of them, but I put these prices down calculating to allow liberally for all the works done.

Question.—Is your examination in chief you say in your estimate in "Defendants' Exhibit No. 1" you allowed to Plaintiff fifteen per cent above what you considered a fair price for the work and materials done. Is the estimate of the work done at Lennoxville fifteen per cent more than the first estimate; if not, what per cent higher is it?

Answer.—I should have stated from fifteen to thirty per cent. I cannot tell how much higher the estimate of the work at Lennoxville in the second estimate is than the first, without a calculation. In making my second estimate I added from fifteen to thirty per cent over the actual value of the works done by the Plaintiff for the Saint Lawrence and Atlantic Railroad Company, hoping by such a liberal estimate the settlement might be arrived at between plaintiffs and defendants.

Question.—Was not the last estimate made at the request of defendants' Attorney long after this action was brought?

Answer.—I believe it was some time after the action was brought. I remember that the summons in this cause was sent to me by the President or Superintendent, with a letter of instructions, which I don't now recollect.

Question.—Are not the items in your first estimate respecting work at Coaticook the same, with the exception of the third, which is omitted, as those in the first estimate, with the variance of eleven pence?

Answer.—I do not remember what my second estimate was at Coaticook. In reference to it, I find they are the same.

Question.—In the third item of your first estimate, "Plaintiffs' Exhibit X" you have estimated two thousand feet board measure of sound timber four pounds. Is that the same timber as you refer to as having been retained by Baldwin until the company paid for it?

Answer.—It was not sawn timber but boards. They are not the same. The boards which were taken away were seasoned boards and piled up and covered.

Question.—Where did you get the plan, "Defendants' Exhibit A"?

Answer.—There was a specification put into my hands when I was appointed superintendent of the works. I am not sure whether this is the one or not.

Question.—Is this signed by any person?

Answer.—I don't know whether this is signed or not, but one given to me I believe was signed. Upon examining I find it is not signed.

Question.—Did you not receive from Mr. Fraser, one of the plaintiffs, the specifications which were furnished them for their work?

Answer.—I recollect one day at Waterville when coming on to the works, asking for a specification, as I had not mine with me, and he gave me the specification, and when I examined the specification I found that their work was not according to the specifications.

Question.—Did you ever give it back to him?

Answer.—If I remember right the specification was in his own hand-writing, and I think I gave it back to him immediately.

Question.—Can you state positively that you did not receive of him a specification about the twenty-second day of June, 1883, and never afterwards gave them back to him?

Answer.—I have no recollection of receiving a specification from Mr. Fraser. My impression is that his foreman, after Plaintiffs were turned off the works, gave me a specification which Fraser had furnished him for the building at Coaticook.

Question.—Is it not true that when Plaintiffs were ready to put up the Water Station at Waterville the ground was not graded, and that plaintiffs had to get it done by Mr. McGovern, in order to get on with the work?

Answer.—I never heard of any complaint of that kind. In fact, where the Water Station was built it was almost naturally a grade, and when I first went there cedar posts were set to place the building upon.

Question.—Is it not true that when the contract was taken from Plaintiff the site at Compton Station was not prepared or graded for the building?

Answer.—I cannot say whether it was graded or not.

Question.—Is it not true that no Water Station has ever been built at Lennoxville?

Answer.—There has some been built at Lennoxville.

Question.—Did you go to Lennoxville and Waterville, or either of these places, together with Fraser one of plaintiff, accompanied with John Laws, Thomas Barber and David G. Slone, to examine plaintiff's work?

Answer.—I did.

Question.—Was Matthew Henry, a witness in this case, present when you examined the materials and work done in shop at Waterville?

Answer.—I do not know whether he was or not. I have no recollection of his being there.

Question.—Did you find any fault with the materials and work done in shop at Waterville in presence of Mr. Laws, Mr. Barber and Mr. Slone?

Answer.—I did.

Question.—Did you not request these parties to value said work?

Answer.—I did.

Question.—Is not Mr. Laws represented to be a good judge of work?

Answer.—He is.

Question.—Had not the plaintiff at Waterville a circular saw, planing machine, carriage (tonguing) and grooving machine, and an upright saw, put up for the purpose of this work, at a cost of about twenty-five pounds?

Answer.—I do not know that they had. I heard them say that they had a shop there.

Question.—Were not the materials and work done in shop at Waterville for the Cootlook Station rendered unnecessary by reason of defendants' changing their plan and building a brick Station at Cootlook?

Answer.—There was no change in the plan until the contract was taken away from them that I am aware of, and the principal part of materials there furnished by plaintiff did not agree with the specifications. In fact, we continued to complete the frame after the work was taken out of plaintiff's hands.

Question.—Can you swear that you have seen specifications signed by D. Stark or any of the engineers of the Defendants, which were furnished and delivered to plaintiff when the contract was put into their hands?

Answer.—I cannot. I do not recollect of ever having seen any signed, except one or two that were furnished to me when I had a contract with the company.

Question.—Have you had any special contract with defendants since you were general superintendent of the wood work?

Answer.—Not with this line. I had one last winter, not with Saint Lawrence and Atlantic Railroad Company, but at Montreal with the Grand Trunk.

Question.—Would not plaintiffs of (have) had command of the materials at Waterville and at Cootlook, had they been permitted to go on with their work and received pay as the work progressed to enable them to meet their liabilities?

Answer.—I cannot say.

Question.—Look at the Exhibits filed by Plaintiffs marked "X," "Y," and "Z," and say whether the signature Benj. Holmes, V. P., are the signatures of Benjamin Holmes, Vice-President of the Saint Lawrence and Atlantic Railroad Company.

Answer.—I should say they were Benjamin Holmes' signature.

The signature "Jas. A. Gordon," subscribed to Plaintiff Exhibit No. "6" is my signature. Mr. Stark told me when there was a difficulty between plaintiffs and defendants, to get a settlement by arbitration, but plaintiff's attorney required something stronger at the time, that is, after the parties had examined the work and returned to Sherbrooke.

Question.—Did not plaintiffs require that a bond should be made which should be binding on defendants as the final settlement, and inasmuch as this was not done, was not this the cause of the thing falling through?

Answer.—I cannot say as to that. I supposed that what we had signed was enough, and had the arbitration gone on, I think they would of (have) stood to it. I do not know whether any other one other than Mr. Stark was aware of the arbitration.

Question.—Were not plaintiffs by their contract to act under the direction of the engineers?

Answer.—The contract speaks for itself.

Question.—In speaking of the work at Lennoxville not being according to contract do you not mean that it was not according to Defendant's Exhibit A?

Answer.—They were not according to the plans and specifications.

The witness having heard the foregoing deposition read, he declares the same to contain the truth, persists therein, and hath signed

JAS. A. GORDON.

Taken, sworn and acknowledged at Enquete sittings this 17th of November, 1867.

E. SHORT, J. S. C.

CHARLES A. JORDAN, of the Town of Sherbrooke, Carpenter, being sworn saith.

I know the parties in this cause. I am not related, allied, or of kin to any or either of them, nor interested in the event of this suit.

I am in the service of the defendants, and have been to work on the line for some five or six years past. I am acquainted with Mr. Fraser, one of the plaintiffs, and I remember that the plaintiffs had a contract to build some Way and Water Stations on the then St. Lawrence and Atlantic Railway Company at Windsor, Lennoxville, Waterville and Compton. I have examined the contract in this cause filed as defendants' Exhibit No. 4 and also plaintiffs' Exhibit No. 1, by which the plaintiffs undertook to build for the said St. Lawrence

and Atlantic Railroad Company and to have completed at the following periods: They were to build the Water Station at Windsor, to be completed on the first day of August then next after date of the said contract, to wit, the first day of August 1883. The Way and Water Station at Lennoxville to be completed on the fifteenth day of September then next. The Way and Water Station at Waterville, on the first day of October then next. The Way and Water Station at Compton on some date, according to the specification, at and for the price of two hundred and fifteen pounds for each Way Station, and ninety-five pounds for each Water Station. I am aware that the plaintiffs performed work on several of these stations. I understood they completed the Windsor Station before I went on to the work. In the first part of the summer, I think in the month of June, I was sent to Lennoxville by James Gordon, the Superintendent of Bridges and Building of the Saint Lawrence and Atlantic Railroad from Longueville to Island Pond, to work on the station there; there was William Pearson, Joseph Hudson, and another Canadian, whose names I do not recollect, worked there a few days. I understood the work had been taken from the plaintiffs and we were sent on to finish it. I have been a carpenter for the last ten years, and have been a contractor for buildings, and I consider myself a judge of the price and quality of carpenters and joiners work, and what it would cost to erect and finish such buildings as are mentioned and described in defendants Exhibits No. 4 and A.

Question.—In what condition did you find the Station when you went there, and what was the quality of the work at Lennoxville?

Answer.—When we first went there, the floor was partly laid of rough boards, and part of planed, it was sheathed up outside with one coat of boards planed, tongued, and grooved, some of these boards the edges were in the grooves, and some were not; on a part of the outside we sunk the nails through to get the sheathing off, and drove them together as well as we could, and fastened them on again. I considered at the time that the boards were put on green and had shrunk. We had to take the casing off the windows, and we found after the casings were taken off, that some of the frames fell out, because, as I considered, they were not properly nailed in. The cornish (cornice) was all taken off the corners and replaced. The roof was repaired; it was leaking some. I do not remember were (whether) they were spruce or pine. The chimney was partly taken down.

I have examined Defendants Exhibit marked A, purporting to be a specification of certain works. I had seen the specification for work for Way and Water Stations on said line of Railroad, about the time I worked on the said Way station at Lennoxville, and from my remembrance of them, this Exhibit A is similar to the specification I then saw. The foundation of the Way Station at Lennoxville was covered up when I went there, but on taking off the base-board and digging down, in order to put on such a base-board as required I found posts, but found no masonry; but I am not prepared to say that there was not any masonry below where I dug.

Question.—What would be the difference of making the foundation of said Way Station on cedar posts, thirty or thirty-four in number, and making a foundation of dry masonry, about two and a half feet below the surface of the ground and two feet thick on the top?

Answer.—I should think there would be fifteen pounds difference.

Question.—Which would be most expensive, to make such foundation of cedar posts, or the mere laying up of such a wall?

Answer.—I think it would cost less to make a foundation of cedar posts than the laying up of the wall itself would, laying aside to (the) cost of furnishing the stone.

I remember that when we went there, that part of the Verandah was broken down, the sleepers on which it rested not being sufficient to carry it; part of it was doored with planed boards and part of it with rough.

Question.—Were the doors of Baggage Room strong, diagonal battened, folding doors, well nailed, with wrot (wrought) iron nails, hung with strong wrot (wrought) T hinges, and having a superior ten inch dead lock?

Answer.—I would not say as to the hanging. The lock was no a ten inch lock. I do not remember the other particulars about that door. The privies was (were) not built at all. I remember that there was a door or two made after I went there.

Question.—How did you find the chimney at that station, and what was done to it?

Answer.—The chimney was broken down. The blind crib that was around it was leaking, and we built the crib all over, and the chimney was repaired.

Question.—Was the Way Station at Lennoxville finished according to the specification, which you say you saw?

Answer.—It was not. There was only one thickness of sheathing outside, and the privies were not built at all. I do not think there would be much difference in building the station according to the specification, and the manner in which it is built, except that the difference of building the foundation on cedar posts, would cost about fifteen pounds less than if laid of dry masonry. I think the extra verandah behind the station, would cost about as much as the privy and partitions which were not built.

Question.—How much would it cost to construct such a Way Station and Water Station in the year of 1883, the builder furnishing the materials?

Answer.—I think, for a rough guess, without making an estimate, it would cost to build such a Way Station as that, about three hundred and twenty-five pounds, and for a Water Station, such as those described in the specification, seventy-five pounds. In making these estimates I do not calculate that it would cost that sum to the contractor, but this includes a profit of twelve per cent.

Question.—Can you state whether the parties undertaking to build such a Way Station in the year of 1883 for the sum of two hundred and fifteen pounds, would of (have) gained or lost money by it?

Answer.—I should say they would of (have) lost money by it.

Question.—How much money do you believe they must of (have) lost upon each Way Station?

Answer.—I should say they must of (have) lost fifty pounds, that is if they completed them.

Question.—What was the position of the work at Waterville when you went there after the work was taken over from the plaintiff?

Answer.—The frame of the Water Station, chimney and veranda, and the roof was built, and the building was ready for the Way Station. I should think the building and materials for the Water Station and tank would be worth \$10,000. I was sent by Mr. Gordon to stander company, which had been done and was being done for the Way and Water Station. It consisted of four frames, window making, and a tank for the Way and Water Station. The work was not built, I think, the right kind of (light) but the veranda. They were by (the) plaintiff. I made an estimate at the time of all things was done, both on the site of them and their value, and put it down in a book which I have not now with me, so that I will not undertake their memory. (In view) the public interest of the valuation.

The examination of this witness in detail, I believe, is given in the report of the jury. And having completed with me for the purpose.

On the 10th day of December, 1887, the witness was examined for the purpose of his own testimony, and the examination was continued at 10:30 a.m. on the 11th day of December, 1887.

I have looked for the book above mentioned and have not been able to find it.

Question.—Can you state from recollection nearly the amount of the contents of the materials and work found at Flanders' shop at Waterville? [Objected to by plaintiff. Objection sustained.]

Answer.—I should say that between fifty and fifty pounds, and the value of the materials I think that would not say positively.

Question.—Do you remember whether the work actually done was made according to the contract? Whether the doors and windows were the right size or not?

Answer.—I understood they were not.

Question.—Did the St. Lawrence and Atlantic Railroad Company get possession of the work and materials in Flanders' shop?

Answer.—I understood they did not, and they were not used about the building when I was there. I heard Mr. Flanders refused to give them up, because he said the plaintiff owed him, and that he, Flanders, would not give them up until he was paid.

Question.—On reflection, can you state approximately the value of the work and materials of the Way and Water Station at Waterville at the time you went there?

Answer.—There was no Way Station there. There was some materials there for it, but I do not remember how much. I should estimate the Way Station and materials for it at from twenty to twenty-five pounds, so we found them when the work was taken out of plaintiff's hands.

Question.—Were you at Coaticook at the time the work was taken out of plaintiff's hands; and what was the state of the work there at that time?

Answer.—I was there very near that time. There was some timber there then I was sent the plaintiff's got there for the Way Station, and the Company had a man framing it.

CROSS-EXAMINED.—Question.—Do you know whether the defendants prepared the ground for the Way and Water Station at Lenoxville and Waterville in 1888, or whether it was delayed till 1889?

Answer.—I do not know; I cannot say positively. I was there in June, 1888, but would not say whether the ground was prepared or not. There was not a Water Station at Lenoxville, and has not been one built since. At the time the work (was taken) out of the plaintiff's hands there was some timber framed or partly framed. I should think the company might have obtained water at this place by being (bringing) it the distance of half a mile. At the time I went to Lenoxville the Company was running their cars up to this place, and making use of the station. The floor of the building seemed to me to have been laid down permanently, and that the platform was not then built. When I speak of the veranda being broken down I cannot say whether it was broken down by freight being thrown upon it or not, but I considered, at the time, that the foundation of the veranda was not sufficiently strong. I mean by this that it was not sufficiently strong for a permanent job. I cannot say whether at the time I went to work at the Station at Lenoxville there was difficulty in obtaining seasoned lumber or not. It is generally difficult to get it here, but it can (could) be obtained at that time; there was a great deal of lumber used. If lumber is not perfectly seasoned it will shrink more or less, but if lumber is not very wet it will not shrink so as to draw the tongues out of the grooves.

Question.—If the ordinary lumber of the country was put up for shanking as this was, and tongued and grooved, would it not shrink more or less?

Answer.—I think it would. I have seen the Station built by Mr. Gordon, and to my knowledge now have shrunk so as to require any repairs.

Question.—If lumber partly seasoned and used as this was for shanking, were you on in the fall and remained till the following June, would it not open very much in the joints?

Answer.—It would open in the joints, but not enough to draw the tongues out of the grooves if it was partly seasoned.

Question.—Do you know whether during the progress of the work at Lenoxville and Waterville the Company deviated from their original plans in any particulars?

Answer.—I think they did on this Station at Lenoxville. I think there was to be no veranda on the back side where there now is, and veranda which were to be built that are not built.

Question.—How much did it cost the defendants to complete the Way Station at Lenoxville after it was taken out of plaintiff's hands?

Answer.—I could not say. I could make an estimate pretty near if it were necessary. I suppose the bills can be brought forward. I do not know as this Station was ever used as a Freight House or not. At the time I was there they were building a Freight House.

Question.—What did it cost to repair the chimney and build the blind wall that you have spoken of (of) in your examination in chief?

Answer.—I could not say. I do not know whether the material for the foundation was changed by the Company's order or not, but as far as I can learn the foundation has stood well all the time.

Question.—What would it cost to take off and replace the shingles on the Station at Lenoirville, as you have stated in your deposition in chief?

Answer.—I could not say what it would cost without looking back to the time then.

Question.—Can you give in what way the sum from thirty to fifty pounds, stated by you as the value of the Station, was found in Hender's shop at Waterville to be made up?

Answer.—It was made up by a quantity of oak, some, including the oak, and some oak, and then putting the value upon them.

Question.—How much of each kind?

Answer.—I have not my estimate made up yet.

Question.—Do you know whether the materials were subsequently made up or not?

Answer.—There is no Way Station at Waterville. The man who went to work for the Plaintiffs at that time said they belonged to Mr. Hender, one of the Defendants. Mr. Hender said he would not give them up till he had received a certain amount of money paid, because they were in his shop, and he claimed pay from them for his labor. I do not know how much he claimed, or whether he had any claim or not, except from what I heard him say. I understood that these materials were being prepared for the Station. I do not exactly remember what the size of the doors was. I understood at the time that they were not the requisite size, and I think I knew at the time that they were not the requisite size, from a draft that I saw. I do not know whether the specifications, so far as the doors are concerned, were changed or not.

Question.—Do you not know that in carrying out contracts for Railway buildings and other public buildings, the plans and specifications, are almost always varied or changed in some particulars, and frequently changed by consent of parties? (Objected to as irrelevant.)

Answer.—I think they may be sometimes.

Question.—Do you not know still this was particularly the case with regard to buildings along the line of Railroad constructed (constructed) by the Defendants? (Objected to as above.)

Answer.—I cannot say that it was particularly the case with defendants; but I knew there was an alteration at Lenoirville.

The Witness having heard the foregoing deposition read, he declares the same to contain the truth, per-
petua therein and both signed.

CHARLES A. JORDAN.

Taken, sworn and acknowledged at Request sitting this 14th day of December 1867, before me,

E. SHORT, J. S. C.

WILLIAM FRASER of the Town of Shastabuck, Carpenter, being duly sworn, said:

I know the parties in this cause, I am not related, allied or of kin, to any or either of them, nor interested in the result of this suit. I am in the service of the defendants in this cause. I remember the time the plaintiffs were working on the Railroad Station at Lenoirville, for the St. Lawrence and Atlantic Railroad Company. This was in May or June one thousand eight hundred and sixty-three. I was then in the employ of the said St. Lawrence and Atlantic Railroad Company, under James Gordon, who was then Superintendent of Bridges and Buildings on said road. I was sent about the middle of June, by said Gordon, to work on the Way Station at Lenoirville. Joseph Hader, Frederick Jordan and Henry McFurline, carpenters and joiners also worked with me. The work on said Station had been taken away from the plaintiffs, and we were put on the work to finish the Station.

Question.—In what condition did you find the Station when you went there, and what was the quality of the work?

Answer.—We found some of the joists of the veranda broken down, not being sufficiently strong. The roof was leaking and we repaired it as much as we could with new shingles, but we could not make a good job of it. The shingles put on by the plaintiffs were spruce shingles and were laid irregularly and too far to the weather. We found the outside of the Station covered with a sheathing of one-inch boards, tongued and grooved. The tongues were shrunk out of the grooves because the boards had been put on green. We had to take them all off, that is all the outside sheathing, and put them on again and tighten them down. We had also to take off all the pillars and corner blocks, and put them on again, as they were badly put on. I don't know what put them on the first time.

Question.—Do you know who were the parties who had agreed to build the Way Station at Lenoirville, before you went there?

Answer.—I understood it was Mr. Fraser and Nelson. I see now here Mr. Fraser, who was one of the parties as I understood. I know him by sight. We had to take off the window frames before we could punch out the nails to get off the said sheathing, and when we got the window cases off we found that the inside frame was attached to inside frame, in some places by one nail some by two nails and some by none at all, so that when the cases (sillings) were taken off the inside frame fell back into the wall.

When we took off the corner blocks we were ordered to bevel them back an inch and a half, so as to form a square of three inches, as when the two heads came together. I do not know what the specifications were.

Question.—If the corners were (were) to have cut brackets three inches in thickness with plain inch planks were the corners as you found it (them) made in that manner.

Answer.—It is so long ago that it is hard for a person to recall it. We had to take off all the outside sheathing, the brackets and corners also, but I do not remember particularly how the corners actually were (were).

Question.—Was the work you found there done on the said Way Station at Lenoirville performed in a workmanlike manner or not?

Answer.—Some of it was badly done. The biggest (biggest) part of the work was not done in a workmanlike manner. I do not know what the foundation was made of.

Question.—Did you make any estimate of the cost of the work done on the main of the waterworks and the millrace furnished, or either of them, on the Lennoxville Water Station?

Answer.—I made no estimate at that time and I am not prepared to estimate such work now. I only worked at Lennoxville on the water undertaken by the plaintiff.

CROSS EXAMINATION.—I have been for three years and over in the employ of the Grand Trunk. My principal work has been building buildings while I was with Mr. Gordon. And for the last two years I have followed the business of building cars.

Question.—Do you know who the plaintiff are in this case?

Answer.—I don't know what the word plaintiff means; but I know that Mr. Fraser, who I saw was then head of the Company.

Question.—Do you know who the defendants in this case?

Answer.—The Company are the defendants. There's not to that being a railway.

Question.—Have you any personal knowledge of the work of which you have spoken in your examination in chief?

Answer.—I don't know whether Fraser or Mr. Nelson did the work.

Question.—Do you know who did the work?

Answer.—I do not.

Question.—Do you know whether the work of which you have spoken; that is the shingling, the sheathing and the cornices, were put on by the plaintiff in this case, or by workmen in the employ of St. Lawrence and Atlantic Railroad Company, that is, have you any personal knowledge?

Answer.—I think George Bryant work (worked) there, but I am not sure. We finished a good deal of this building over, but we could not make a good job of it.

Question.—Do you know whether it has been shingled over since that time or not?

Answer.—I do not know.

Question.—About how long did it take you to put on the shingling of which you have spoken?

Answer.—I cannot exactly recall so much, and therefore I shall not appoint any time.

Question.—How long did it take you to repair the roof of which you have spoken of in your examination in chief?

Answer.—I would not give you any time as to how long it did take, as we were sometimes on roofs on the roof, and sometimes in the shop.

Question.—How long did it take you to take off the plaster and corner blocks, as you have spoken of in your examination in chief?

Answer.—I do not remember, it is so long ago. In my examination in chief, I think I have specified all the particulars of the work which was done in Lennoxville that was had. I do not know whether it was possible to get well seasoned timber at Lennoxville or not. I saw a good deal of well-seasoned lumber that Gordon got, but where he got it I do not know. Tongued and grooved boards, even if well put together will shrink unless perfectly seasoned. I learned my business partly in Sherbrooke, and partly in Drummondville. I have now worked at the business about twelve years.

The witness having heard the foregoing deposition read, he declares the same to contain the truth, parties therein and hath signed.

(Signed)

WM. PEARSON.

Taken and sworn at Esquimaux sittings this 18th day of November, 1887.

(Signed)

E. SCHOIT, J. S. C.

Joseph Hudson, of the Town of Sherbrooke, carpenter & joiner, being duly sworn said:

I know the defendants in this case, I am not related, allied or of kin to any or either of them, in their service, nor interested in the event of this suit. I have for the last three years, worked for the Grand Trunk Railway Company, most of the time under the superintendence of James Gordon. I went to work on the Lennoxville Station on the third day of July, I think four years ago, but I cannot tell exactly. I understood that Mr. Fraser had been building the Station, and that the work had been taken away from him. Wm. Pearson, Fred. Jordan, and I think Peter Pearson, were there to work before I went there.

Question.—How long before you went there did they go to work on the said Station?

Answer.—I cannot tell exactly, but they went there before I did. I think they went there about the twentieth day of June, but I cannot speak positively, it is so (such a) long time ago. When I went there they had just begun to take down the sheathing outside. They had been working on the rough (roof) before, and had been fixing up inside, repairing the floor. I think the rough (roof) was covered with spruce shingles, but cannot say exactly. I assisted in taking off sheathing outside; it was single sheathing, only one thickness of boards, tongued and grooved.

Question.—What was the condition of this sheathing when you began to take it off?

Answer.—I believe it was pine sheathing, and was put on green. We took it off because it had shrank so as to draw the tongues out of the grooves (of) some of them.

Question.—In what condition did you find the Verandah, when you went there?

Answer.—When I went there we had to take the sheathing off over head and tighten it; we had to take off (off) the ceiling of the post and ease it over. It was put on with the green lumber. The floor was partly made of planed and part of unplanned boards, and I remember that a couple of the sleepers were broken. The floor in the station was not fixed before I went there, therefore I cannot say anything about it. The capital around the verandah we had to take off and put on again. The work when I went there, was not very good, if it had been, we would not have had to fix it over. I do not know what the work had been when it was first made; by the appearance of the work green lumber must have been used. I do not think that I (a) single stick of seasoned lumber had been used. I worked myself there, about a month, with the other parties mentioned above. After I finished work at Lennoxville, I went to Waterville to work for Mr. McFarlane, who made the Water Station there.

Question.—I cannot tell how long it took to make the sheathing ready. It has been at long, I cannot remember, and this (he) then that I was at Lennoxville, the cow yard running and the Company used part of the station for freight. I cannot tell how long it took to repair the capitals and sheathing to the windows. I know we worked there some time. I cannot say whether it was hard or got assigned. In either at the time or not, as I took no contract.

Answer.—If lumber not perfectly seasoned, was used for sheathing, as this was, in the fall previous, and remained till the following June or July, would it not naturally shrink more or less?

Answer.—Of course it would. We put on new lumber on the inside, the outside we put on some new lumber, others we put on again as it was.

This deposition having been read, the defendant declared the same to contain the truth, perjury therein and declared he cannot sign his name.

Taken, signed and acknowledged before me, this 18th December, 1888.

E. SHORT, J. S. C.

George G. Bryant, of Sherbrooke, being duly sworn, said:

I know the parties in this cause, I am not related, allied or of kin, to any of either of them, nor interested in the result of the suit. I saw the interior of the Grand Trunk, working under Mr. Gordon, the superintendent of bridges and buildings on that line. In August 1882, I was in the employ of the plaintiff in this case. I think I entered their employ about the 15th of that month, that is August 1882, and worked on the Way Station at Lennoxville, for about three months more or less. The plaintiff had begun old work a short time before I commenced. I worked for the plaintiff, the post spring at Waterville and Coaticook for a month, and was working for them at Coaticook, when the work was taken out of their hands, some time in the month of June 1883. During the time I worked at Lennoxville, the plaintiff had sometimes five men, but most of the time only three. I remember at Lennoxville, the sheathing put on the Way Station was trenched and grooved and only put on with one thickness. The lumber was partly seasoned, and I am aware that the sheathing was taken off (off) the next spring, and I understood that it was because the sheathing had shrank. At the time the work was taken out of the hands of the plaintiff in June 1883, the Way Station at Coaticook was partly framed, perhaps half framed.

Question.—Are you aware how the Way Station at Lennoxville is finished, and can you estimate how much it would cost in the year of 1882 to have finished and completed such a station?

Answer.—I am aware how the said station is finished, and to the best of my judgement, without making a very close calculation, for such a station as is now built, could not be built at that time for less than the sum of about two hundred and seventy-five pounds. But I could not make a close calculation of what plaintiff was bound to do, without referring (referring) to the plans and specifications. I have examined the Exhibits filed in this cause as defendants exhibit No. 4 and exhibit A.

Question.—How much do you estimate it would cost to build a Way Station in the year 1882, according to said specification and contract?

Answer.—I should (think) there could not be a very great difference from the sum I have already stated, two hundred and seventy-five pounds. I should think that a party must have lost money to build such a Way Station at that time, at the sum of two hundred and twenty-five pounds; at least they could not have made much, and I do not believe they could have done so without losing money. My impression is that the Station at Lennoxville was finished before I went to Coaticook to work; it was about the middle of May, 1883. I think so as I was sent down with other parties to finish the remainder which had either broken down or had not been finished.

Question.—What was the capacity of Fraser or Nelson, or either of them, as competent workmen as carpenters and joiners?

Answer.—Nelson I did not consider any workman at all. Fraser was better than Nelson; he understood a good deal about work, but was not much of a workman.

Cross-Examiner.—I should think that it would take about twelve days' work to tighten the sheathing on the Way Station at Lennoxville. The building was about 30 X 25 feet. I never worked a great deal at the carpenter's business before I went to work for plaintiff. I had worked about 6 years at the cabinet business; I served a regular apprenticeship thereto. I had worked only about six months at the carpenter's business at the time. I had never taken any contract for building any building, neither had I built any building at that time.

Question.—State particularly, item by item, how you make up your estimate of the cost of such a Station as was built at Lennoxville, to be as you have stated the sum of two hundred and seventy-five pounds.

Answer.—I could not here state item by item, but I have it at home in a book, what I considered each part of the work would cost as I put it down when I made such estimate. I made this estimate about three or four weeks ago. I made it from memory.

Question.—Why cannot you make a similar or equally correct estimate from memory at this time?

Answer.—Well, there is considerable amount of figuring to be done as to the amount of lumber required to build such a building, and it would take some time to do it. Mr. Fraser had charge of the work at Lennoxville, that is both Fraser and Nelson were there, but Fraser seemed to take the principal part of the management. What work I did at Lennoxville I intended to do in a workmanlike manner, and I think I did so. Mr. Lindsey, I think his first name was Dow—was foreman; a man by the name of Smith worked there; I think his first name was Charles; John Elias worked there part of the time. He did not work all the time. I was there, and another man by the name of Wood, who worked there some after the building was raised. All that I saw these men do while I was there I thought was done in a workmanlike manner, excepting at one time, that was Smith. I worked there about three months. These men I have mentioned worked there the most time I did, excepting Wood; he worked about a month before I left. Fraser wished we should do our work well, and the greater part of the work was done as well as is usually done

in such building. The plaintiff's work was not done in the way of building a station, but in the way of building a building.

Q.—The building that was built there I did not consider as a building at all.

A.—The building that was built there I did not consider as a building at all. The building that was built there I did not consider as a building at all.

Q.—The building that was built there I did not consider as a building at all.

G. G. BRYANT.

Taken, sworn and subscribed at Bangor, this 10th January, 1886.

E. SHORT, J. & C.

DAVID BEAVER, of the City of Montreal, in the District of Montreal, being duly sworn, deposes and says:

I know the building in this case; I am not related, allied or in the way of office of those, nor interested in the work of the work. I am the master engineer, and superintendent of this part of the Railway between Montreal and the Lake of the Two Mountains, from the month of 1883. I know that the plaintiff had a contract with the Saint Lawrence and Atlantic Railway Company for building certain Way and Water Stations on parts of the Railway. I have examined the contract and in this case as Defendants' Exhibit No. 4. It is the contract upon which the plaintiff were to build such buildings at the time the contract was made. Alexander T. Galt was the President of the said Saint Lawrence and Atlantic Railway Company, and the said contract was signed by him as such President. In March, 1883, I went to the line as master engineer, and took charge of the works to be carried by the plaintiff under said contract. The Way Station at Waterville was built when I went on to the work. They were just beginning to put in the foundation at Lennoxville at that time, and the plaintiff continued to work there until about the month of June, or some time into the month of June, when I was compelled to discharge them. Being shown the letter, plaintiff's Exhibit No. 7, I perceive that it was on the twenty-fourth of June that I gave them the letter of dismissal under the said contract.

Question.—State what were your reasons for taking said contract out of plaintiff's hands?

Answer.—Because the work they were doing required to be finished immediately, and they (were) getting on very slowly with it, and because I not only found they were doing bad work, but endeavoring to defraud the company by covering it up, and I was satisfied had the work been allowed to pass, the building at Lennoxville would not have stood. In laying the rails upon the posts I found them (they) instead of leveling the tops of the posts they had braced them up with chips, pieces of woodwork, and any other refuse material they could pick up about the station ground; and the work generally in the Station was badly done. I had frequently notified the plaintiff, both verbally and by letter, that I should be compelled to take the work out of their hands, unless they proceeded faster with their work and performed it better, and notwithstanding these repeated warnings they did not proceed faster with the work, and in consequence I was compelled to discharge them from the work altogether, as above stated. Defendants' Exhibit marked A. is the specification for said Way Station. I have examined them and also the contract marked Defendants' Exhibit No. 4.

Question.—From your experience as engineer are you prepared to estimate how much such a Way Station as that mentioned in said contract and specification would have cost in the year 1883, or the spring of 1883, and if so state how much it would cost.

Answer.—I should say, to have it done according to the terms of specification and contract that then finished and fifty pounds would not have been so (too) much for the Way Station alone.

Question.—Do you believe it was or was not possible to have built such a Way Station as that at Lennoxville in 1882 for the sum of two hundred and fifteen pounds, without losing money in doing so?

Answer.—I do not think it was possible if the contractors did their work skillfully. The frame of the Water Station at Waterville was placed on the foundation when the work was taken from them. Nothing done to the Way Station at Waterville, and nothing at all was done at Coaticook. Alphonse Brooks was assistant engineer under me, and had also superintendence of plaintiff's work.

Cross-Examination.—I am quite sure that defendants' Exhibit A. agrees with specification of the work made by Mr. Gault previous to my taking charge in the spring of 1883. I was not one of the witnesses to the contract defendants' Exhibit No. 4, and when I say in my examination in chief that the said Exhibit was signed by Mr. Galt as President of the road, I only speak so of (from) my knowledge of his handwriting, and not from any knowledge of the facts.

Question.—State the particular work which you have a personal knowledge of the plaintiff doing badly on the Station at Lennoxville, and in what particular the work was deficient.

Answer.—The whole work was deficient from beginning to end. The foundation was propped (propped) up in a certain manner; the joints were badly made, and the material altogether was of a very poor quality. The same foundation, that is, the posts, is there now that the plaintiff put in. The material used was a bad quality of timber. It was noty, (knotty) choky, &c.

Question.—Is there not now in the Station at Lennoxville the same sills and the same frame put in by the plaintiff?

Answer.—When I took the work out of the plaintiff's hands I entrusted Mr. Gordon, the foreman carpenter at the time, to complete the work, and make use of such materials in the building as would answer. I believe it is possible that some of it may be there, but a great part of it was taken away. My instructions to Mr. Gordon were to take the building down and throw out all the bad timber, and I believe it was done. I do not know whether it was enclosed and shingled the previous fall, but I had nothing to do with it then. When I went on to the work in March I am not sure if it was shingled; it was partly boarded in.

Question.—Can you state any other particulars than those you have already mentioned, in which the work was badly done?

Answer.—No.

Question.—Have you any personal knowledge of the repairs or changes which were made by Mr. Gordon either in the frame or sills subsequent to the plaintiff's leaving the work?

Answer.—Yes, I know how the foundation was leveled, leveling the galls, placing the sills evenly upon them instead of on the blocking which had been put in by the contractor.

Question.—Was the roof of the station at Lennoxville removed or taken of (off) after the work was taken out of the plaintiff's hands, or have you any personal knowledge of a stick of the timber being taken out of the frame?

Answer.—I know that the sticks in the frame must have been taken out, from seeing the work after it was finished, but I did not see them taken out. I do not remember about the roof. The frame could be taken out and removed without taking down the building. In regard to the Water Station at Coaticook, I am positive nothing was done by the plaintiff. I am not sure that the plaintiff had not the materials for the frame on the ground, but I never saw them. At Waterville, there was nothing done towards the Way Station at all.

Question.—When you state that such a station as was to be built at Lennoxville, would have cost three hundred and fifty pounds in 1852, give the particulars of the work and materials that would be required to make up such a sum.

Answer.—I cannot do that now. I can send you one if you wish. I consider the work and materials required by the contract and specification, allowing a fair profit to the contractor, would amount to three hundred and fifty pounds. What I consider a fair profit would be from twelve and a half to fifteen per cent.

Question.—State approximately or as near as you can now how this sum is made up.
The cross-examination of this witness was postponed and on this the 15th day of March 1858, the witness reappeared and his cross-examination was continued as follows:

Answer.—I now produce a statement marked A, a, and signed by me, showing that the cost of such a building as the Lennoxville station would cost thirteen hundred and sixty-three dollars, if built according to specifications.

Question.—How do you arrive at the cost of the materials in your statement?

Answer.—The cost is what I know to be the price of such materials ever since I had anything to do with such work. I don't think lumber has varied in price much since 1852. I believe nails were worth five dollars per hundred pounds, at Lennoxville at that time.

Question.—How do you make up your estimate of three hundred dollars for lathing, plastering, and painting?

Answer.—Well, I put it down there as an approximate sum for that work. I do not believe it could be done for less than that sum. I do not think the windows could be done for less than twelve dollars.

Question.—How do you make out the sum of five hundred dollars in your estimate, as the price of labor?

Answer.—It was a lump sum, got by taking a certain number of carpenters being at work, and giving them a certain time for finishing it at the usual rate of wages. The building was not chiefly constructed under the superintendence of Mr. Gzowski. The frame was only put up, and the work done by them was condemned by me, I believe before any part was finished.

Question.—Did you not inform Mr. Fraser, one of the plaintiffs, some time after he left the work, that you had been induced to take the work out of his hands, on the representation of Mr. J. A. Gordon, a witness previously examined, or something to that effect?

Answer.—I have no recollection of doing so.

Question.—Did you not, after the work had been taken out of plaintiffs' hands, offer to Mr. Fraser, one of the plaintiffs, on behalf of the St. Lawrence and Atlantic Railway Company, the sum of one hundred and fifty pounds, in settlement of the account between the plaintiffs and the said Company?

Answer.—I do not remember of having done so.

Question.—Did you ever make him any offer?

Answer.—I had several conversations with Mr. Fraser after the work was taken out of his hands, and it is possible I may have made him an offer of settlement. I do not know whether I did or not. I remember that there was an attempt at arbitration, but it fell through from some cause or other.

Question.—Did you not, in Montreal, offer to write a letter for the plaintiffs, promising to pay the plaintiffs one hundred and fifty pounds in settlements for work done along the line?

Answer.—I have no recollection of it whatever. At the time I went on to the work at Lennoxville, part of the foundation of the Way Station was covered up and part was not, and it was on my finding the foundation in the state I have mentioned in my examination in chief, that made me more particular in my examination, and the foundation was uncovered and made right. I am sure I spoke to Mr. Fraser, one of the plaintiffs, about taking the work out of his hands, before I wrote the letter mentioned by me in my examination in chief. I spoke to him of this several times before I wrote to him. I forget the particular place, but it was somewhere on the line. I have no distinct recollection about it, but I think one of the times was at Waterville. I am not aware that there were any delays on the part of the company in preparing the ground for Way and Water Stations to be built by the plaintiffs. I do not know why the Water Station was not built at Lennoxville. I do not know whether the plaintiffs were ordered not to build the Water Station; they might have been by Mr. Gzowski, but I do not think they were by me. There has not been any Water Station built there since. I am not aware whether there is any difficulty in getting water at Lennoxville Station or not. Mr. Fraser, one of the plaintiffs, has, I believe, been employed on the line of the Grand Trunk Railway Company, between Richmond and Quebec. I was not on that part of the line at the time he was at work there, and cannot speak of the quality of the work.

RE-EXAMINATION.—I think I could approximately state the difference in the value of the Lennoxville Station as now built, and the Estimate I have made, marked A, a, but I could not without examining the building for that purpose: and further saith not.

This deposition having been read by me, I declare the same to contain the truth, persist therein, and hath signed.

(Signed)

D. STARK.

Sworn on the day and year first above written, and acknowledged before me this thirteenth day of March, one thousand eight hundred and fifty-eight.

E. SHORT, J. S. C.

Statement showing cost of building such a Station as that at the Village of Lennoxville on the Grand Trunk Railway, in accordance with the specification for that structure.

60 cubic yds Stone foundation, @ \$2 50,	\$150 00
284 feet Sills, @ 10 cts,	28 40
12 Posts 17 X 6 X 9, 204 ft B. m., @ \$6,	12 90
20 Sills, 17 X 4 X 8—630 " @ \$6,	6 80
Boarding main building, 5820 feet, @ \$8,	42 60
do Verandah, 6024 " @ \$8,	48 20
do Roof, 1460 " @ \$8,	8 70
Nails, 28 X 90 X 2 9, 1620 " @ \$6,	9 70
4000 feet B. m. Beams, @ \$8,	32 00
900 feet Planks, @ 5 cts,	10 00
3000 feet Flooring, @ \$6,	18 00
8 Windows, @ \$12,	96 00
4 Doors, @ \$8,	32 00
Lathing, Plastering and Painting,	900 00
10 Verandah Posts, 100 feet, @ 5 cents,	5 00
14000 Shingles, @ \$2,	28 00
300 lbs board and shingle Nails, @ \$5,	15 00
Chimney,	16 00
Locks, Batts and Screws,	8 00
Labor,	500 00
	\$1363 00

D. STARK.

MERRITT GORDON, of the Town of Sherbrooke, in the District of St. Francis, being duly sworn saith :
I know the parties in this cause, I am not related, allied, or of kin to any or either of them, in their service, nor interested in the event of this suit. I am a carpenter by trade, and I am now contractor, building bridges for the Grand Trunk Railway, during the winter of 1851, and the summer of 1852. I remember well I began, the year the cars run out of Richmond, to build some Way and Water Stations at Upton and Acton for the then St. Lawrence and Atlantic Railway Company, on the line now occupied by the defendants.

The only difference between the Way Stations I built there, and the manner in which they are built, is that there was no verandah on the back of the Way Stations I built, as there is at Lennoxville, but at the back of those I built there were privies instead of the verandah, and there are no privies at the station in Lennoxville. I think it would cost two pounds more to build the verandah as at Lennoxville, than to build the privies as I did at Upton and Acton.

Question.—What would it cost to have built, in the year of 1852 at Lennoxville, a Way Station such as you built the year previous at Upton and Acton, and such a one as is actually built at Lennoxville, without including any profits to the contractor?

Answer.—It is a hard question to answer at that time, but I could tell nearly the amount for the last two or three years, and during the year I built myself; according to the specification I built mine by, it would have cost two hundred and seventy-five pounds, that is the actual outlay. I could not say what it would cost as it is built at Lennoxville, because I have never seen it, that is because I have not seen the specification of it, but I have seen the building a thousand times.

Question.—What would it have cost to have built such a station as is actually built at Lennoxville at the time you built yours?

Answer.—That is a question I cannot answer, as I never saw the specifications.

Question.—From your knowledge of the building as actually erected, could it have been built without loss to the contractor, for the sum of two hundred and fifteen pounds?

Answer.—I do not think it could.

Question.—How much profit do contractors generally intend to put into their tenders when they give in their amount to perform certain works?

Answer.—I always consider about twenty or twenty-five per cent is what contractors put into their tenders, but I have sometimes made more, and sometimes I have made less.

CROSS-EXAMINED.—I think I paid in the year of 1851, twenty-two shillings and six pence a cwt., for nails. I should think for windows of that kind, that is, the glass, sash, painting, and glazing, would cost from three dollars and a half to four dollars each.

Question.—How many shingles would it take to cover the roof of that kind at Lennoxville, supposing the building to be twenty by fifty, allowing for the ordinary projection of the roof?

Answer.—I should think it would take about sixteen thousand of the short shingles, and about thirteen thousand of the long shingles.

The witness upon having heard the foregoing deposition read, he declares the same to contain the truth, persists therein and hath signed.

MERRITT GORDON.

Taken, sworn and acknowledged at Enquete sittings, this 15th day of March, 1856, before me.

E. SHORT, J. S. C.

APPENDIX A.

Statements submitted to plaintiffs' and defendants' counsel by the Hon. Mr. JUANES SANCHEZ, showing the items composing the sum of \$236, for which Judgment was rendered.

Windsor Water Station, (allowed by Caf. in.)	295 0 0
Alteration in foundation, (" ")	7 10 0
Lennoxville Water Station,	60 0 0
" Way do	305 0 0
Waterville Water do	87 0 0
Materials at Waterville, Windows, Doors, Sash, &c.,	127 0 0
Coaticook, work and materials,	29 17 11
Damages at rate of 10 per cent for taking work away,	70 0 0

\$701 7 11

Less amount admitted to have been paid,

465 0 0

\$236 0 0

In the addition of the several items allowed by the Court below at \$701 7 11, there is an evident error of addition of the sum of \$230, the true addition making only the sum of \$461 7 11. So that, adopting in full the view of the Court below, the judgment should have been rendered for the sum of \$236 0 0

Amount claimed by plaintiffs as the only amount really due, allowing a large per centage for profit, in work actually done and materials furnished.

To Water Station at Windsor,	295 0 0
" allowed for change of foundations,	7 10 0
" work 1st materials in Way Station at Lennoxville,	160 0 0
" do do Water do do	20 0 0
" Materials for work—even if furnished,	5 0 0
" Materials and Work on Frame of Way Station at Coaticook,	24 17 11

\$312 7 11

Leaving overpaid by the Company the sum of \$162 12 1. To \$312 7 11, even if added the amount of work done at Waterville, but which the Company never got nor used,

\$40 0 0

Amount of Plaintiffs' Exhibit No. 1,

\$232 7 21

And if to the latter sum is added the value of materials got out for the plaintiffs, but for which Company had to pay Mr. Baldwin before the Company could get possession thereof, and for which plaintiffs never paid,

25 0 0

Makes in the whole only the sum of

\$377 7 11

While amount acknowledged to have been paid to plaintiffs is,

465 0 0

Leaving still overadvanced by the Co.,

\$27 12 1

SHERBROOKE, September 8th, 1855.

ST. LAWRENCE & ATLANTIC R. R. COMPANY,

TO FRASER & NELSON.

To Water Station at Windsor, as per contract,	295 0 0
To Tank for Windsor Station,	7 10 0
To extra work at Windsor, including Masonry, work on Bridges, material &c., as per bill furnished,	27 0 0
To Lennoxville Way Station, including extras as per bill furnished, but not extra work or recent alterations,	183 0 0
To Water Station at Lennoxville unfinished work, valued by Mr. Lawson at...	65 0 0
To Water Station at Waterville as per contract,	96 0 0
To Tank at do	7 10 0
To timber for Way Station at Waterville,	5 5 0
To work on same and brick for chimneys,	9 15 0
To Coaticook Way Station, frame complete, with timber for Water Station, brick for chimneys,	115 0 0
To doors, sash, trimmings, frames, jotting, jet blocks, brackets for two Way and three Water Stations complete,	135 0 0
To making spout at Waterville, board nails, account taken by Mr. Gordon,	

\$245 0 0

CR.

By cash received on account,

\$465 0 0

Balance due Fraser & Nelson,

\$230 0 0